

REMARKS

This responds to the Office Action mailed on April 3, 2007. Applicant's counsel has filed a Terminal Disclaimer herewith to overcome the Examiner's nonstatutory obviousness-type double patenting rejections. Withdrawal of the nonstatutory obviousness-type double patenting rejection is therefore appropriate and requested at this time.

The Examiner rejected claim 1 under 35 U.S.C. § 102(b) as allegedly being anticipated by Cope, U.S. Patent No. 5,123,914. The Cope '914 patent relates to a visceral anchor for visceral wall mobilization. The patent clearly does not relate to the structure originally set forth in claim 1. To expedite allowance of the present application, however, claim 1 has been amended to clarify the language in view of the Examiner's interpretation of the Cope '914 patent. In this regard, claim 1 has been revised to state that the bone anchor is coupled with the elongate tensile member "and positioned outside of said interior space" of the helical anchor. The element in the Cope '914 patent interpreted as a "bone anchor" by the Examiner is actually a rod 30 located within a sheath 16 (with sheath 16 interpreted by the Examiner as a "helical anchor"). The rod 30 is clearly enclosed within the sheath 16 and further contained by elements 13, 14 at opposite ends thereof. Therefore, unlike the apparatus set forth in amended claim 1, rod 30 not only fails to be a "bone anchor," it also fails to be positioned "outside of said interior space" of a helical anchor. For at least these reasons, amended claim 1 is clearly not anticipated by the Cope '914 patent and withdrawal of this rejection is appropriate and requested at this time.

Independent claims 15 and 16 have been added by this amendment. Claim 15 combines original claim 1 and original claim 2, while claim 16 combines the subject matter of original claim 1 and original claim 9. Claims 2 and 9 were rejected only on the basis of non-statutory obviousness-type double patenting in view of U.S. Patent No. 6,984,241. Therefore, claims 15 and 16 are in complete condition for allowance in view of the submitted Terminal Disclaimer.

If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicants do not believe that any fees are due in connection with this response other than the excess claim fee, extension fee and terminal disclaimer fee. However, if such petition is due or any other fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

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